

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Springfield Business Park LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 14C 001

**ORDER FOR DISMISSAL WITH
PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on October 29, 2014. Timothy Kerrigan, a Member of Springfield Business Park LLC, appeared telephonically at the hearing before the Commission. Malina M. Dobson, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization. The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction.

II. STANDARD OF REVIEW

Section 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when it is timely filed, the filing fee is timely received and thereafter paid, and a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.¹ Any action of the County Board of Equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.² Parties cannot confer subject matter

¹ See, Neb. Rev. Stat. 77-5013 (2012 Cum. Supp.).

² Neb. Rev. Stat. §77-1510 (Reissue 2009).

jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

III. ANALYSIS

On June 20, 2014, the Commission received an envelope containing an appeal of the determination of the Douglas County Board of Equalization for tax year 2013 made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009).⁴ The deadline for filing appeals of these determinations for tax year 2013 was on or before August 24, 2013, or on or before September 10, 2013, if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.⁵ The Douglas County Board did adopt a resolution extending the deadline for hearing protests, so the filing deadline for tax year 2013 was September 10, 2013. An appeal to the Commission is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the Commission on or before the date specified by law for filing the appeal.⁶ The envelope containing the appeal was postmarked June 19, 2014, and received by the Commission on June 20, 2014.⁷ Therefore, the Commission determines that the appeal was not timely filed.

The Appellant asserted that the Commission should take jurisdiction of the tax year 2013 appeal of the valuation of real property located at 17107 Evans Place (Parcel Number 2532200306) because it did not receive the Douglas County Board's \$260,200 final determination letter dated August 6, 2013. The Douglas County Board's \$260,200 final determination stemmed from the Appellant's protest of the County Assessor's \$260,200 notice value of the 17107 Evans Place parcel filed on June 30, 2013.

The County Assessor's \$260,200 notice value was mailed to the Appellant at the following address: 11725 N. 172nd Circle, Bennington, NE 68007.⁸ The Appellant's protest of this notice value was filed with the Douglas County Board on June 30, 2013, using this same Bennington

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁴ Case File.

⁵ Neb. Rev. Stat. §77-1510 (Reissue 2009).

⁶ Neb. Rev. Stat. 77-5013(2) (2012 Cum. Supp.).

⁷ Case File.

⁸ Case File.

address.⁹ The County Board’s final determination letter dated August 6, 2013, also used this Bennington address.¹⁰

The Commission notes that any effort to obtain relief regarding compliance with the above-noted filing deadline under the Nebraska Statutes is equitable in nature. In *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission and Douglas County Board of Equalization*,¹¹ the Supreme Court of Nebraska held that, “TERC does not have power to apply equitable principles in jurisdictional matters...” In the *Creighton* case, the appellant filed its appeal by the incorrect appeal deadline listed on the Commission’s appeal form. Applying equitable principles, the Commission determined that the appeal was timely filed because the appellant had relied on the incorrect information provided by the Commission. The Supreme Court of Nebraska held, however, that the Commission did not have the authority to adopt equitable principles to allow jurisdiction.¹²

IV. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeal.

V. ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.
2. This decision, if no appeal is filed, shall be certified within thirty days to the Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

Roger Morrissey
1819 Farnam Stre. Rm 400
Omaha, NE 68183-1000

John Ewing
1819 Farnam St., Rm H03
Omaha, NE 68183

as required by Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

⁹ Case File.

¹⁰ Case File.

¹¹ 620 N.W.2d 90, 260 Neb. 905, 921 (2000).

¹² *Id.*

3. Each party is to bear its own costs in this matter.

SIGNED AND SEALED November 26, 2014.

Seal

Thomas D. Freimuth, Commissioner

Nancy J. Salmon, Commissioner